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1464 La Cima Road
Santa Barbara, California
687.2436

March 11, 2010

Mayor Helene Schneider and
Members of the Santa Barbara City Council
c/o City Clerk
735 Anacapa Street
Santa Barbara, CA 93101

Re: Appeal to City Council of March 1, 2010 Project Denial By Single Family Design Board; Proposed Project: Backyard Retaining Walls [MST 2009-00391] at 1464 La Cima Road

Dear Mayor Schneider and Members of the City Council:

As property owner and applicant for the proposed project, I hereby appeal to the City Council of the City of Santa Barbara the Denial by the Single Family Design Board ("SFDB"), on Monday, March 1, 2010, of the Proposed Project at 1464 La Cima Road.

The basis for the appeal is that the all necessary findings can and should be made based on the proposed project description, the design of the project, the other evidence presented (plans and arborist letter), and the applicable provisions of the Neighborhood Preservation Ordinance, Single Family Design Board Guidelines and Hillside Design District Ordinance.

My attorney will provide a more detailed discussion of the entire matter in a future submission prior to the City Council's appeal hearing, but (as provided in Sections 22.69.080 and 1.30.050 of the Municipal Code) I identify the "significant issues, facts and affected parties" as follows:

- As to significant issues and facts, see the attached Statement of Significant Issues and Facts, which is incorporated by reference.
- As for affected parties, Owner believes that there are only two affected parties: the City and the Owner – since the project is virtually imperceptible from public vantage points streets and may only be seen by neighbors who make an effort to position themselves on their property so that they may view the proposed project.¹

Respectfully submitted,

SCOTT McCOSKER

¹ It is acknowledged that one set of neighbors, John and Kathy Cook, represented by Tony Fischer, Esq., oppose the proposed project – but the Owner contends that such opposition is simply part of a vendetta by the neighbors against the Owner for having enlarged his home during a remodel project several years ago and such opposition does not stem from any aspect of the currently-proposed project having any effect on such neighbors. In contrast to the Cooks, other neighbors have no objections to the proposed project.

Statement of Significant Issues and Facts

1. The site at 1464 La Cima Road is 10,615 square feet, and the footprint of the existing home and garage is about 1,200 square feet, with a Floor Area Ratio of less than 75%. There is a large backyard, which slopes downhill from the home and which contains over 20 oak trees (ranging in size from 6 to 18 inches in diameter).
2. The current-proposed project is not an effort to permit previously-constructed Allan Block walls that required a permit, but were constructed without a permit.
3. The Owner regrets following erroneous advice that he received to the effect that the walls that were previously-constructed did not require permits. While what was previously built without permits (walls and fill areas) overlies a portion of the backyard, about two-thirds of the backyard was left in a natural condition. The purpose of the previously-built walls was to minimize erosion, improve drainage, and create small areas in the backyard, some of which were usable as outdoor living and some of which were usable as planting areas. The fill behind the walls for such areas was excess dirt generated in the prior house remodel and expansion project.
4. The following summarizes events in 2009:
 - After the Owner was advised by City staff that the as-built walls required permits, he engaged both a surveyor and landscape architect, and applied for permits.
 - In the course of SFDB hearings in 2009, the Owner also engaged a civil engineer who had done the engineering on other Allan Block walls that had been constructed on a nearby property [1484 La Cima Road; permit issued on consent agenda for two 4' high 80 linear foot retaining walls]. This engineer concluded that the walls as-built at 1464 La Cima Road were stable and (with one minor modification on one short section of wall) were structurally sound. This engineer's drawings and a short letter were submitted to the SFDB.
 - The neighbors to the west, the Cooks, and Mr. Fischer (see footnote 1, page 1, above) claimed that the encroachments into the setbacks would cause privacy problems, among a shotgun approach of objections.
 - At the conclusion of hearings in 2009, the SFDB became somewhat impatient that the project had not been redesigned sufficiently per their request and the SFDB denied the application, but expressly without prejudice (so that a revised project could be submitted).
 - The SFDB stated that its denial was made, in order of importance, for the following reasons: (1) lack of compliance with the Neighborhood Preservation Ordinance, (2) no substantial redesign as requested previously, (3) concerns about privacy for the neighbor to the west, (4) encroachment into setbacks, and (5) concerns about compatibility with existing oak trees, structural integrity of existing as-built walls and inadequacy of engineer's letter, and lack of handrails.
 - The Owner understood from the tenor of individual comments at the SFDB at the time of denial that there was great skepticism about the conclusions of the civil engineer engaged by Owner, and further understood that such concerns were a driving force for the denial.

5. Because the Owner was required by City building enforcement staff to have a pending project or become subject to administrative fines, *the Owner redesigned the prior plans to eliminate any walls located in the setback* and re-applied to the City in August 2009 for the remainder of the as-built walls. This proposal is referred to as the "August 2009 Proposal" below. At the time this application was made, the Owner's representatives advised the City staff that the project had been filed as a placeholder while research was being conducted concerning structural issues.
6. In order to address the "driving force" concern about the structural integrity of the as-built walls, as stated by the SFDB in 2009, the Owner engaged a different engineer, Greg Van Sande, and Mr. Van Sande undertook a lengthy evaluation of the as-built walls in conjunction with the engineers of the Allan Block Company in Minnesota – using all available information including two different soils reports and information obtained from partial excavation of one wall and an interview with the builder of the wall concerning the construction technique that had been followed. Ultimately, the conclusion of the Allan Block Company's engineers was that certain elements of the construction of the walls would require that the as-built walls be completely de-constructed and then re-constructed before they could be said to meet the specifications of the Allan Block Company – although there was no visible sign of imminent instability of the walls at the time of Mr. Van Sande's visual inspection (which remains true today). The information from the Allan Block engineers was received by Mr. Van Sande during December 2009, about one week before Christmas, and communicated shortly thereafter to the Owner.
7. In January 2010, the Owner and Mr. Van Sande re-designed the proposed walls, and there was no longer any attempt to work within the layout of the existing walls – in view of the information from the Allan Block engineers. Such new design, among other things, included structural elements known as geogrids, as suggested by Allan Block Company's engineers for this site.
8. In this "January 2010 Proposal," which was responsive to the various specific concerns of the SFDB at the time of denial of the prior proposal:
 - no walls were proposed in setbacks;
 - there were only 36 lineal feet of proposed Allan Block walls and about 220 square feet of exposed Allan Block wall area [as compared to the >100 lineal feet and nearly 700 square feet of exposed wall in the August 2009 Proposal] – resulting in as project about one-third the size of the as-built Allan Block walls and the August 2009 Proposal;
 - Allan Block walls were proposed in those areas where Allan Block walls were already existing and where removal of the existing walls would require demolition and grading, but a CMU wall was proposed in one place in lieu of Allan Block Walls to minimize grading where there had not been extensive earth work previously; and
 - An Arborist's Letter was provided that included multiple mitigation measures.
9. At the February 1, 2010 SFDB hearing, the Cooks and Mr. Fischer appeared in opposition to the January 2010 Proposal. At the end of the February 1 hearing, the SFDB requested several changes and more detailed drawings. Among the requested information was a demolition plan for the existing as-built walls and a survey of the drip line of the

oak tree canopy and more detail on landscaping, as well as a redesign of the Allan Block walls proposed in the January 2010 proposal.

10. In February 2010, the Owner submitted revised plans for a yet further redesigned project, and included the level of detail in drawings and additional information that the SFDB had requested. In this "February 2010 Proposal":
 - the patio areas were lowered and the proposed Allan Block walls were further reduced to 24 lineal feet and about 100 square feet of exposed walls (as compared to 36 lineal feet and about 220 square feet of exposed Allan Block wall area in the January 2010 Proposal and >100 lineal feet and nearly 700 square feet of exposed wall in the August-2009 Proposal) – meaning that the project walls and patio and planting areas would occupy less than 15% of the Owner's backyard;
 - all walls were outside the setbacks;
 - the proposed walls were moved away from oak trees; and
 - an Update to the Arborist's Letter, setting forth additional analysis and mitigations, was submitted.
11. At the March 1, 2010 SFDB hearing, the landscape designer noted that the largest impact to any oak tree occurred in one place, where a proposed Allan Block wall and patio area would impact up to (but not more than) 20% of the root zone of one oak tree. Other walls would impact less than 5% of the root zone of three other trees. The remaining 17+ sizable oak trees on the site would be untouched by the proposed project. It is noted that the Arborist's Letter and Update included extensive provisions for an onsite arborist to supervise all work in the root zone of trees, which was to be done by hand and would include various techniques to minimize disturbance and also provided for additional mitigation by planting of additional trees (even though no trees were to be removed).
12. At the March 1, 2010 SFDB hearing, the Cooks and Mr. Fischer again appeared in opposition. At the conclusion of the Owner's presentation and public comment by the Cooks and Mr. Fischer, the chair of the SFDB stated that the matter was almost certain to go to the City Council on appeal, no matter what action the SFDB took and the chair person then requested that all SFDB members keep that in mind as they made their comments. The Owner understands why such a statement about appeal to the City Council would be made by the SFDB chairperson (it was almost certainly true), but the statement appeared to have an unfair effect on the Owner in that it created a "snowball" effect for the first set of comments and left little room for discussion such that the initial comments of one SFDB member ultimately turned into the two findings of the SFDB – in short, the process was a somewhat stilted consideration of the matter in which SFDB members appeared to feel some obligation to back up the first opinion stated since the matter was going to the City Council on appeal. In its consideration of the February 2010 Proposal, the SFDB did not discuss the specific wording of the findings at any point, did not consult the ordinance and guidelines directly, and did not seek assistance in doing so from the City staff who were present at the hearing. At the end of the SFDB comments, the SFDB asked if the Owner preferred to receive a denial on March 1 or an opportunity to come back to the SFDB with a revised proposal. Under the circumstances, the Owner stated a preference not to come back to the SFDB and the SFDB then denied the February 2010 proposal.

13. As will be discussed in the Owner's attorney's future submission, (a) the February 2010 Proposal meets all requirements under the City's Neighborhood Protection Ordinance, Single Family Design Board Guidelines, and Hillside Design District Ordinance, and (b) the evidence overwhelmingly supports an approval of the February 2010 Proposal.
14. As will also be discussed in the Owner's attorney's future submission, the SFDB's findings are not supported by evidence and do not justify the denial of the February 2010 Proposal. Additionally, as a matter of process, the SFDB's denial and findings appear to have been swayed by the continuing vociferous (though meritless) opposition of the neighbors and Mr. Fishcher and by the introductory comment of the SFDB chairman concerning a likely appeal to the City Council.
15. It is the desire of the Owner, after the end of the current rainy season and prior to the next rainy season, to remove the existing as-built walls and simultaneously to reconstruct the much smaller project contained in the February 2010 Proposal. Therefore, the Owner hopes to have this appeal heard in the next few months. It should be noted that the impact on oak trees of removing the as-built walls and constructing the February 2010 Proposal is essentially the same as simply removing the as-built walls. The Owner should be allowed to make the very modest proposed use of a very small portion of his backyard, with walls constructed according to Allan Block company specifications, since the February 2010 Proposal will be without any significant adverse impacts to oak trees and without any appreciable (much less any significant) impact on public views or on neighbors.

End Statement of Issues and Facts